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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,516	01/30/2006	Bryan James Larkin	1278-14	7152
28349 7590 10/03/2008 DILWORTH & BARRESE, LLP 333 EARLE OVINGTON BLVD. SUITE 702 UNIONDALE, NY 11553				
EXAMINER BAINBRIDGE, ANDREW PHILIP				
ART UNIT		PAPER NUMBER		
3754				
MAIL DATE		DELIVERY MODE		
10/03/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,516

Applicant(s)

LARKIN, BRYAN JAMES

Examiner

ANDREW P. BAINBRIDGE

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE-US)
Paper No(s)/Mail Date 1/30/2006
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-7 are rejected under 35 U.S.C. 102(b)** as being anticipated by US 5,154,320 (Bolduc).
3. Bolduc discloses in figures 1-5 a pressurized aerosol sprayer 10 (col. 3, lines 10-20) with a first container 12 to hold a first mixture 54 and a second frangible container, pouch or sac 50 ("or other frangible material", col. 3, lines 10-20) at the bottom of the container (see figures 1-3) that holds a second mixture 52 that is released into the first mixture by a breaking rod 42, 46 when the actuator 32 is depressed downwardly toward the bottom of the container 12.
4. **Claim 10 is rejected under 35 U.S.C. 103(a) 35 U.S.C. 102(b)** as being anticipated by US 3,625,400 (Freidrich).
5. Freidrich discloses in figures 1-3 a container 12 that holds a first ingredient 32 and a second ingredient 34 is held inside a second container 14 and the two ingredients are mixed 42, 82, 68 in a mixing valve 64 prior to dispensing (see figure 2).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. **Claim 8 rejected under 35 U.S.C. 103(a)** as being unpatentable over Bolduc in view of US 4,808,006 (Kaufeler) and US 3,635,261 (Morane et al.).

9. Bolduc has all of the elements of claim 8 except for an expulsion member that has a threaded projecting portion that extends from the bottom of the can and by rotation of the threads creates the rupture of the second container. Kaufeler in figures 1-6 teaches a stem 5 that penetrates from the bottom 18 of a container that contains two containers in order to drive and rotate 17 the stem 5,8 into a membrane 10 that allows the two ingredients to mix. Morane teaches in figures 1-15 a threaded pin 27-28, 35-37 that translates a pin into and out of a membrane. It would be obvious to one of ordinary skill in the art to adapt Bolduc with Morane and Kaufeler to create a container with two mixtures that begin separated but are introduced to one another by a threaded stem that projects into the container from the bottom because this is a safer way to ensure that the rupturing does not occur until the user intends it to happen, rather than by a mistaken depression of the trigger.

10. **Claim 9 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Buldoc in view of US 4,858,759 (Mauthe et al.).

11. Buldoc has all of the elements of claim 9 except for the container having an internal agitation means to agitate at least one of the fluids and the drive means is separate but engageable magnetically with the agitation means. Mauthe teaches in figure 4 an agitator 36 that is within the container 31 that driven magnetically 35 from outside the container (col. 7, lines 5-20). It would be obvious to one of ordinary skill in the art to adapt Buldoc with Mauthe because Mauthe teaches a reliable way to ensure that the fluids are mixed without creating new sources of leaks.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW P. BAINBRIDGE whose telephone number is (571)270-3767. The examiner can normally be reached on Monday to Thursday, 9:30 AM to 8:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P. B./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art
Unit 3754